

## **DISCLAIMER**

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## **APPLICATION OF**

**ROBERT A. WINNEY D/B/A  
THE WATERWORKS COMPANY OF  
FRANKLIN COUNTY**

**CASE NO. PUE000665**

**To change rates and charges**

## **REPORT OF ALEXANDER F. SKIRPAN, JR., HEARING EXAMINER**

**March 16, 2001**

By Order for Notice and Hearing dated December 12, 2000, the Commission docketed the application of Robert A. Winney d/b/a The Waterworks Company of Franklin County ("Waterworks" or "the Company") and scheduled a public hearing for March 20, 2001. By letter filed on March 2, 2001, Mr. Winney, on behalf of the Company, requested leave to withdraw the application.

On March 13, 2001, the Commission's Staff, by counsel, filed a response opposing the request to withdraw. Staff states that in its testimony and exhibits filed on March 5, 2001, Staff identifies numerous aspects of the Company's operations and finances which warrant Commission review. Staff further argues that this matter should proceed to hearing so that a full record may be developed on the Company's current financial position and its rates, charges, and service.

The Commission's Rules of Practice and Procedure do not address the withdrawal of applications. Staff counsel offers no citations to prior cases concerning the contested withdrawal of an application, but instead relies on the Commission's general authority to regulate public service companies. Thus, from a procedural perspective, this case may present the Commission with an issue of first impression. The situation is analogous to that of a nonsuit, which is provided for in Virginia civil procedure by Virginia Code § 8.01-380. This section provides plaintiffs with one nonsuit in a cause of action as a matter of right. However, the right to a nonsuit is unavailable without the consent of an adverse party who has filed a counterclaim, cross claim or third-party claim unless such claim can remain pending for independent adjudication by the court.<sup>1</sup>

I find Staff's prefiled testimony in this proceeding does not rise to the level of a counterclaim or cross claim. More importantly, the issues Staff appears to be raising may be more appropriately addressed in the context of a Rule to Show Cause proceeding where the burden of proof will rest squarely on the Staff.

Therefore, I am of the opinion and find that the Company's request for leave to withdraw its application should be granted, and the scheduled hearing canceled. Accordingly,

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<sup>1</sup> Virginia Code § 8.01-380 C.

**IT IS DIRECTED THAT** the hearing scheduled for March 20, 2001, is canceled. I further **RECOMMEND** that the Commission enter an order granting the Company's request to withdraw its application and dismissing this application from its docket of pending proceedings.

## **COMMENTS**

The parties are advised that pursuant to Rule 5:16(e) of the Commission's Rules of Practice and Procedure,<sup>2</sup> any comments to this Report must be filed with the Clerk of the Commission in writing, in an original and fifteen copies, within fifteen days from the date hereof. The mailing address to which any such filing must be sent is Document Control Center, P. O. Box 2118, Richmond, Virginia 23218. Any party filing such comments shall attach a certificate to the foot of such document that copies have been mailed or delivered to all other counsel of record and to any party not represented by counsel.

Respectfully submitted,

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Alexander F. Skirpan, Jr.  
Hearing Examiner

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<sup>2</sup> 5 VAC 5-10-420 F.